

HYDE COUNTY CODE – PROPOSED CHANGES BY OPAB

§36-145

ARTICLE VII. - OCRACOCKE DEVELOPMENT*

DIVISION 1. - GENERALLY

GUIDE TO PROPOSED CHANGES

RED TEXT = NEW
STRIKETHROUGH = DELETE
YELLOW = AREA OF CONCERN

Sec. 36-145. Definitions and rules of construction.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Where a word or term is not defined, the state building code meaning or the customary dictionary meaning shall apply.

Adult use means any use defined as an adult establishment by G.S. 14-202.10.

Building means any structure enclosed ~~and-isolated-by~~ exterior walls constructed or used for ~~residence~~ ~~residential~~, business, ~~industry~~, industrial, or other purposes. The term "building" includes the term "structure."

Building setback line means a line parallel to or concentric with the street right-of-way, property line or high-water mark establishing the minimum allowable distance between such right-of-way, property line or high-water mark and the nearest portion of any building, excluding the outermost three feet of any uncovered porches, decks, steps, eaves, gutters, ~~or-and~~ similar fixtures.

Building/structure height means the vertical distance from the base flood elevation, less two feet, ~~of-the building-site-as shown on the building site elevation certificate, as-of-the-date-of-the-ordinance-from-which-this article-is-derived,~~ to the highest finished roof surface or with regard to structures to the highest point of the structure, ~~as of~~.

Commercial use means a structure used in the sale of products or services. In rare instances, where a structure and use can be proved not to require the defined parking under this article, it may be considered on a case-by-case basis.

Dwelling unit means a ~~single-family-dwelling-residential~~ unit providing complete, independent living facilities for a single-family, including permanent provisions for living, sleeping, cooking and sanitation.

Family means one or more persons occupying a single-family dwelling unit; provided that unless all members are related by blood ~~or-marriage~~, marriage, adoption, or foster care arrangements, no such family shall contain more than five persons.

Impervious surface area.

(1) The term "impervious surface area" means that portion of a site that allows little or no filtration of precipitation into the soil. The term "impervious surface areas" includes, but is not limited to, that portion of a development project that is covered by:

- a. Buildings;
- b. Pavement, paved roads, paved parking lots, paved paths, patios, paved driveways, and streets;
- c. ~~Hard-surfaced~~ Recreational facilities (e.g., tennis courts); and
- d. Septic tanks, etc.

(2) The term "impervious surface area" does not include:

- a. Wooden slatted decks;
- b. The water area of a swimming pool; and
- c. Gravel parking or driveways.

Comment [LU1]: Add specific date.

Comment [LU2]: How about the open-air use of land for commercial purposes?

Formatted: Font: Not Italic

Comment [LU3]: Not soccer or baseball fields

Comment [LU4]: Should the surface area associated with underground tanks be included?

*Editor's note—The Ocracoke Development was amended and adopted in whole, as amended, on April 20, 1998. It was amended on September 6, 2005, November 20, 2006, and December 3, 2007.

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Lodging unit means one room, or rooms connected together, that are offered for occupancy to transient guests for compensation.

Lot means a parcel of land which abuts and has egress and ingress by means of a public right-of-way or private street or easement and which is occupied or intended to be occupied by a building or group of buildings as provided herein with the customary uses and open space. The term "lot" includes the terms "plot," "parcel" or "tract."

Lot area means the total ~~horizontal-area of a lot, as described in a deed or plat, included within the lot lines.~~ The term "lot area" includes any area ~~within the deed description which that~~ is subject to the right-of-way of any public or private road or ~~which that~~ is subject to any utility easement.

Lot coverage.

- (1) The term "lot coverage" means that portion of the lot area, expressed as a percentage, that is occupied ~~and obstructed by an improvement or an above-ground structure aboveground~~ including, but is not limited to:
 - a. Buildings;
 - b. Decks, paved parking areas, ~~private~~ sidewalks ~~of with~~ impervious surfaces, paved driveways and paved roadways; and
 - c. Any accessory use or structure ~~requiring location located~~ on or aboveground.
- (2) The following exemptions shall be allowed for residential lot coverage calculations:
 - a. "Wet" or water area of ~~the swimming pool(s)~~ shall be exempt from the lot coverage calculations, however, this exemption for the "wet" or water area of the ~~pool(s)~~ shall not exceed 500 square feet of area. Pool aprons and decking shall be counted as lot coverage;
 - b. Wooded walkways over estuarine areas, six feet or less in width, ~~shall be exempt~~; and
 - c. Peat system pods shall be exempt from the lot coverage calculations, ~~since they help mitigate contamination caused by stormwater runoff.~~

Change
suggested
4/10/14

Motel means any group of separate or connects dwelling units or lodging units used for the purpose of accommodating transient guests whether designated as a motel, hotel, inn, motor lodge or otherwise.

~~Number means the singular or plural number each includes the other unless expressly excluded.~~

Parking space means a vehicular storage space of no less than ten feet by 20 feet, plus the necessary access space. ~~The term "parking space" shall always be any dedicated right-of-way.~~

Confusion over meaning

Person includes a firm, partnership, company, organization, trust, association, corporation or any other entity as well as an individual.

~~Indoor commercial~~ *Public recreation* use means any recreation activity ~~or amusement~~ open to the general public for a fee, including games of skill, game machines, climbing walls and pool halls.

Seat means a chair or other device located either inside or outside of a restaurant where patrons are served. Where larger seats are used, such as benches or other means, each 18 inches of width shall constitute a seat.

Shall, may. The term "shall" is mandatory. The term "may" is permissive.

Sign.

- (1) The term "sign" means any surface, fabric or device bearing letters, ~~pictorial or sculptured pictures, or sculpted~~ matter ~~that is~~ designed to convey information visually and exposed to public view. ~~A sign includes or any structures, including billboard or poster panels, that are~~ designed to carry visual information.
- (2) The term "sign" does not include: ~~the following in the application of these regulations:~~
 - a. Signs not exceeding one-square-foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification not having commercial connotations;

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- b. Flags and insignia of any government, except when displayed in connection with any commercial promotion;
- c. Legal notices, identification, informational or directional signs erected or required by governmental bodies or public bodies;
- d. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights; and
- e. Sign directing and guiding traffic and parking ~~on~~ private property, but bearing no advertising matter.

Sign area.

- (1) The term "sign area" means the area of a sign computed as including the entire area within a regular geometric form or combination of regular geometric forms comprising all of the display area of the sign and including all of the elements of the matter displayed.
- (2) The term "sign area" does not include frames and structural members not bearing advertising matter.
- (3) The area of a double-faced sign shall be the area of one face of the sign; provided that the two faces are of the same size and are generally parallel to one another with no more than 24 inches between each sign face.

Structure means anything constructed or erected, the use of which requires location on the ground; or attachment to something having location on the ground.

Tense means the present or past tense and includes the future.

Use means:

- (1) Any purpose for which a building or other structure or a tract of land may be designated, arranged, intended, maintained or occupied; or
- (2) Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Used or occupied, as applied to any land or building, includes the terms "intended," "arranged," or "designed to be used or occupied."

Variance.

- (1) The term "variance" is a relaxation of the terms of this article as they may apply to a specific property where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this article would result in an unnecessary and undue hardship. As used in this article a variance is authorized only for the area, and size of the structure or the size of yards and open spaces.
- (2) The term "variance" does not include and will not be granted for:
 - a. The establishment or expansion of any use otherwise prohibited; or
 - b. Because of the presence of nonconformity in other areas.

Sec. 36-146. Penalty.

- (a) If the development ordinance enforcement officer finds that any of the provisions of this article are being violated, he shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it.

~~(b) When a complaint is reviewed and found to be valid, a stop-work notice will be posted on the site and a certified letter will be sent to the violator in question within ten days from the Ocracoke development ordinance enforcement officer.~~

Comment [LU5]: These restrictions and descriptions probably need to be in some other part of the ordinance dealing with the standards for granting a variance

Comment [LU6]: Stop-work orders probably cannot be used for county zoning violations.

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~~(b)~~ Under G.S. 153A-123 any person found in violation of this article shall be charged with a ~~fine~~ civil penalty of \$50.00, per day. Each day the violation exists will be a separate offense and an additional \$50.00, per day, will be assessed against the violator.

~~(c)~~ Violations of this article shall be a misdemeanor under G.S. 14-4 and each day the violation continues shall be a separate offense.

~~(d)~~ ~~Notwithstanding the criminal penalties in addition to instituting criminal action,~~ the county may institute a civil action against the offender ~~seeking enforcement~~ by appropriate equitable remedy, injunction and order of abatement, or by any remedy authorized by G.S. 153A-123, as amended.

Sec. 36-147. Authority; title.

The county board of commissioners, under the authority granted by G.S. ch. 153A, art. 18 and G.S. 153A-121 through 153A-123, hereby enacts an ordinance which shall be called the "Ocracoke Development Ordinance".

Sec. 36-148. Purpose.

The purpose of this article is to promote the public health, safety and general welfare by:

- (1) Regulating the:
 - a. Density of population;
 - b. Size of yards and other open spaces;
 - c. Height, size and location of buildings and other structures;
- (2) To provide for an adequate transportation system; and
- (3) To provide for adequate drainage, water supply and sewage disposal.

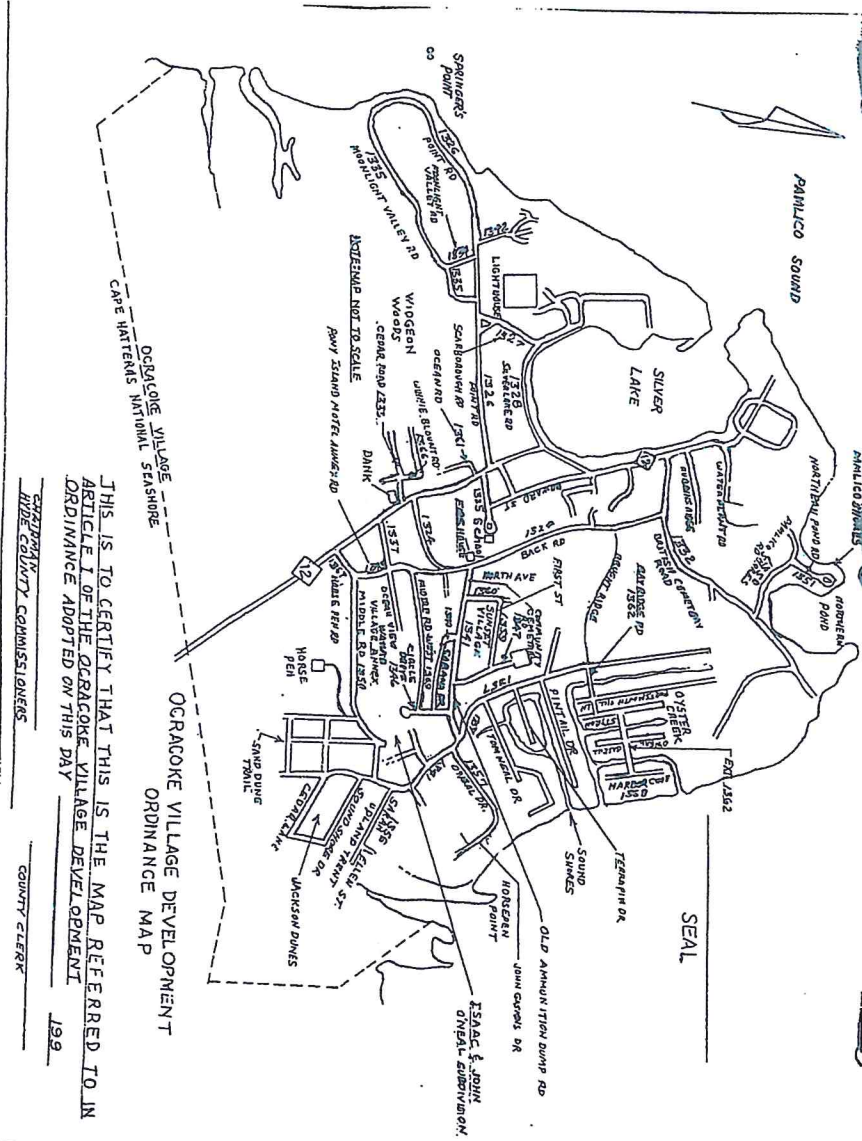
Sec. 36-149. Area.

Pursuant to G.S. 153A-342, that part of Ocracoke Island outside the boundaries of the Cape Hatteras National Seashore, including streams, creeks, ponds, harbors and the Pamlico Sound within one-half mile of shore, as shown on the map which is adopted as a part of this article and which shall be identified as the "Ocracoke Development Ordinance Map," is designated as a zoning area. The map shall contain the signatures of the chairman of the county board of commissioners and the clerk to the board together with the county seal and the date of adoption of the ordinance from which this article is derived. The official map shall be maintained in the county building inspector's office, and two official copies shall be retained by the chairman of the board of adjustment, one of which shall be posted at a public place on Ocracoke Island. This article shall apply only within such zoning area.

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Hyde County, North Carolina
Ocracoke Development Ordinance Map

Suggestion to add map 5/8/14



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Secs. 36-150—36-168. Reserved.

DIVISION 2. - ADMINSTRATIVE AND ENFORCEMENT

Sec. 36-169. Appointment of development ordinance officer.

The county board of commissioners shall appoint a development ordinance enforcement officer who shall be responsible for the administration and enforcement of this article.

Sec. 36-170. Permit.

- (a) *Compliance.* After the effective date of the ordinance from which this article is derived, no building or structure shall be constructed, used or occupied and no land shall be used, except in conformity with all applicable requirements of this article.
- (b) *Required.* A development permit shall be required before any land is used or before any building or structure is constructed, moved or modified. A development permit shall be required before changing the use of any building, structure or land.
- (c) *Term.* The development permit shall expire by limitation six months from date it was issued if the work authorized by the permit has not begun. If the work is begun and then discontinued for 12 months, the permit shall expire and no further work shall be performed until a new permit has been secured.

Comment [L17]: Is the development permit something that is separate from a building permit? If so, it might be good to say something about how the two relate to one another.

Sec. 36-171. Application; contents.

An original and two copies of the application and all supporting documents shall be submitted to the building inspector. Each application shall be supported with a plat, plans and additional documentation which shall contain the following:

Comment [L18]: Is the building inspector also the development ordinance enforcement officer?

- (1) A plot plan. ~~It should shows~~ showing the lot shape, the names of the road on which it is located, if such is named, and the dimensions of the property. The plot plan ~~should- shall~~ be drawn to scale and scale shown;
- (2) The location and size of any buildings that are presently located on the lot and shown to scale on the plot plan;
- (3) The location and size of all-propose buildings or alterations, so designated and shown to scale on the plot plan;
- (4) The floor area of each building, existing and proposed. If multistory, show for each floor;
- (5) The proposed use of the land and buildings;
- (6) If parking spaces are required, the required number, shown where they are to be located on the plot plan, and the total area of parking required;
- (7) The area of any surface that is impervious to water, shown on the plot plan;
- (8) If the property is located adjacent to a body of water or marsh area, the distance from the development to the body of water or marsh area is to be shown on the plot plan;
- (9) On a section drawing show by dimension the elevation of the first floor from the average grade of the property, and the heights of the additional floors and roof. Show any allowable structure proposed to extend above the roof line, with its dimensions, including height;
- (10) The number of families, housekeeping units, or rental units the building is designed to accommodate;
- (11) Approval of the method for sewage disposal and water supply by the appropriate authority;
- (12) Certification that the applicant will comply with all other laws and regulations which relate to the development of the subject property; and

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- (13) Any additional information which may be required to determine conformance with and to provide for the enforcement of this article.

Sec. 36-172. Permit procedure.

(a) *Standard procedure.*

- (1) An original and the application, plans and all additional information submitted shall be filed with the building inspector. The building inspector shall set the date for posting in the Ocracoke Post Office the information concerning the application a minimum of three days after the documents are placed in the mail to the development ordinance enforcement officer.
- (2) Reserved.
- (3) After a development permit has been issued or denied, any person aggrieved may appeal to the board of adjustment (see section 36-205(a)).
- (4) After deciding upon an application for a permit, the building inspector shall mark the original approved or disapproved, with a signed and dated explanation in the case of disapproval. The original of the application and accompanying documents shall be filed at the building inspection department.

Comment [LU9]: ???

- (b) *When no permit is required.* Before beginning any construction, remodeling or alteration owners are encouraged to contact the building inspection department to discuss the proposed project. The building inspector ~~will~~ shall decide whether a permit is required or not based on the information received.

(Ord. of 4-6-2015(1))

Sec. 36-173. Nonconforming situations.

- (a) Within the jurisdiction of this article there presently exist lots, uses and structures with features that were lawful before the ordinance from which this article is derived was adopted or amended, but which do not meet the development standards imposed by this article. These nonconforming ~~situations~~ features may be continued, but there shall be no enlargement, expansion or increase in the extent of their nonconformity.
- (b) A single-family dwelling may be built on any nonconforming lot which is in existence at the time of the adoption of the ordinance from which this article is derived, ~~if for which~~ if for which an improvement permit for a sewage disposal system serving the dwelling can be issued by the county health department and if such dwelling complies, but in all other aspects ~~it must comply~~ it must comply with this article.
- (c) All other buildings and uses established after the effective date of the ordinance from which this article is derived shall comply with the development standards, unless they qualify for ~~a variance~~ variances under section 36-206.
- (d) Any ~~destroyed~~ nonconforming building destroyed or damaged by an act of God or natural calamity may be rebuilt to its original dimensions if a permit for rebuilding is applied for within 180 days from the date of destruction. Thereafter, it shall not be rebuilt, except in conformity with the development standards of this article.

Sec. 36-174. Issuance of certificate of occupancy.

No building or structure shall be occupied, nor shall a use of land be initiated until a certificate of occupancy is issued by the building inspector showing compliance with the North Carolina State Building Code, the development regulations of this article, Coastal Area Management Act regulations, and any other State or local laws applicable to the work. All required improvements shall be completed installed in concurrence with the building permit prior to the issuance of an occupancy permit, including site improvements. The building inspector and the Ocracoke development ordinance enforcement officer shall both approve the certificate of occupancy before it is issued.

- (1) Table of development standards. The following development standards are adopted for the classes

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indicated:

Page 8 is blank due
to formatting issues.

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Hyde County, North Carolina
Table of Development Standards

9/11/14 Jerry Hardison says the chart doesn't define duplexes

Comment [LU10]: If a chart or e table is to be used, it might be a good idea to reorganize and clarify it.

Building Classifications	Single-Family and Two-Family Residences, Including Those with Less Than 400 Square Feet of Floor Area in Commercial Use	Buildings Used for any Purpose Other Than Single-family or Two-family Residences less than 1,500 square feet of Floor Area; Greater than 1,500 square feet, but less than 3,000 square feet; Greater than 3,000 square feet.		
		Area	Square Feet of Floor Area	Floor Area
Minimum lot size shall be sufficient to meet the county health department requirements and to provide for the adequate placement of structures and necessary parking spaces, but not less than:	5,000 sq. ft., except for undeveloped lots of less than 5,000 sq. ft. in existence on April 21, 1986. More than one dwelling may be built on lots of 10,000 sq. ft. or larger as long as they meet all requirements of this article, including 5,000 sq. ft. minimum per dwelling and have a minimum of 16 feet between main structures	7,500 sq. ft.	10,000 sq. ft.	25,000 sq. ft.
Minimum setback of structure from property lines and public rights-of-way and all bodies of water*	Front: 8 feet Side: 8 feet Rear: 8 feet	Front: 30 feet Side: 10 feet Rear: 10 feet	Front: 30 feet Side: 15 feet Rear: 15 feet	Front: 30 feet Side: 20 feet Rear: 20 feet
Minimum distance between structures on a lot	8 feet front, side and rear for all sizes listed on this chart			
Maximum structure height**	35 feet for all structure sizes listed on this chart***			
Maximum lot coverage by all structures and any surface impervious to water	50% for all structure sizes on this chart			

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*Exempted from the water setback requirement are structures not exceeding 256 square feet in total floor area and not exceeding 15 feet in height and used permanently and primarily to protect, store, build, or repair boats, nets and other fishing or water-related equipment of the land owner. Fences, bulkheads, driveways, boardwalks, not exceeding five feet in width and one foot in height, and other like structures are exempted from setback requirements.

Comment [LU11]: They seem unlike one another.

**No structure or appurtenance attached to any structure, except chimneys, antennas and weather instruments shall exceed the 35 feet maximum building height and no exempted structure shall exceed 40 feet.

Change suggested 11/6/14

***The primary roof of a main structure shall have a minimum slope of four inches per foot. This requirement shall apply to accessory structures over 15 feet in height, ~~as measured from eight feet less than three feet of the building site as shown on the elevation certificate.~~ The primary roof of a main structure is that which shelters the major percentage of heated space within the structure.

****Where the right-of-way (R/W) is in excess of 100 feet, the minimum set back to any part of the structure shall be five feet.

****Sign setbacks shall be in accordance with section 36-176, signs.

- (2) Table of Ocracoke Village roads. The following list of roads are those where the state claims right-of-way, listed by state road number (SR) within the Village of Ocracoke, Hyde County, North Carolina. This information is based on state department of transportation correspondence from Gretchen A. Byrum, PE to Earl W. O'Neal Jr, dated June 25, 2004, letter from Mike Kinlaw, division right-of-way agent to Mr. Nathan Sears, subject: Existing R/W on NC 12 on Ocracoke Island, dated June 25, 2004, and August 30, 2004. (To be used with the Table of Development Standards on and this article).

Hyde County, North Carolina
Table of Ocracoke Village Roads

SR 1324	Back Road
SR 1325	Schoolhouse Road
SR 1326	Lighthouse Road
SR 1327	Creek Road
SR 1328	Silver Lake Drive
SR 1332	British Cemetery Road
SR 1333	Cedar Road
SR 1334	Martha Jane Lane
SR 1335	Loop Road
SR 1337	Ocean View Road
SR 1341	Sunset Drive
SR 1341	Trent Road
SR 1342	Live Oak Road

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SR 1343	Old Beach Road which turns into SR 1367
SR 1346	Friendly Ridge Road
SR 1347	Cemetery Road
SR 1349	Cabana Drive
SR 1350	Pamlico Shores Road
SR 1351	Northern Pond Road
SR 1356	Sarah Ellen Drive
SR 1357	O'Neal Drive
SR 1358	Middle Road
SR 1359	First Avenue
SR 1360	North Street
SR 1361	Ocean Road
SR 1362	Cutting Sage
SR 1366	Winnie Blount Road
SR 1367	Old Beach Road
SR 1368	Harbor Cove Road
SR 1369	Sandollar Road
SR 1370	Jackson Circle
SR 1371	Cedar Lane
SR 1372	Arretta Street
SR 1373	Stroyon Lane
SR 1374	Fish Camp Lane
SR 1375	Cuttensage Lane
SR 1376	Pintail Drive
NC HWY 12	Irvin Garrish

Sec. 36-175. Industry.

Due to limited land space and a limited infrastructure with relation to roads, water and electrical power, ~~there will be~~ no heavy industry shall be allowed in the district, with the exception of industry related to seafood processing and production. ~~which has been the traditional industry on Ocracoke.~~

Sec. 36-176. Signs.

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- (a) ~~All Commercial signs shall not be displayed without~~ require a permit. An ~~application #~~ for such a permit shall ~~be submitted to the s~~ Permits shall be applied for by submitting a request to the Ocracoke development enforcement officer along with the required design and location information, ~~consisting of an original and two copies.~~
- (b) All signs shall meet the following standards:
- (1) Location of the sign shall not be in a street right-of-way;
 - (2) Location of the sign shall not obstruct the clear vision at driveways and intersections;
 - (3) Illuminated signs may be illuminated from within if neon type signs or from an external source, but such illumination must be in a manner which avoids glare or reflection which in any way or manner interferes with traffic safety. Any external source of illumination such as a spotlight or floodlight shall be placed so that it is not directly visible from any adjacent property;
 - (4) All signs shall be constructed and illuminated in accordance with the applicable provisions of the ~~North Carolina State Building Code, state building code.~~ All illuminated signs shall be installed in accordance with the applicable ~~electrical~~ provisions of ~~that Code, e—state electrical code.~~ All illuminated detached signs shall have underground electrical service;
 - (5) All signs shall be maintained in good structural and aesthetic condition. Chipped paint, broken plastic, missing letters and exposed lightbulbs are evidence of inadequate maintenance; and
 - (6) Obsolete signs and their supporting structure shall be removed within 90 days after they become obsolete. An extension of 90 days may be granted by the development ordinance enforcement officer.
- (c) All commercial signs shall meet the following standards:
- (1) ~~No sign shall be permitted which exceeds 24 feet in height or 32 square feet in area;~~
 - (2) No sign shall be permitted within ten feet of a road, street, path, way or other such passageway;
 - (3) No freestanding sign shall be placed within 50 feet of another freestanding sign on the same lot; and
 - (4) Any lighted sign must be so lighted as not to interfere with the operation of a motor vehicle or the use and enjoyment of another's property.
- (d) No sign other than those required by a local, state or federal agency or government shall be permitted to be attached to the bottom of or to float on any body of water included within the "Ocracoke Village Development Ordinance Map." This provision shall not preclude on-premises signs on permitted docks.

2/12/15 Butch suggest ban on flashing neon signs

2/12/15 Need to clarify maximum size for signs affixed to buildings

2/12/15 Define freestanding sign

Comment [W12]: A freestanding sign is a sign that is not attached to or displayed upon a building.

2/12/15 Butch suggests businesses have to remove signs within 10 days of closing for winter

Sec. 36-177. Off-Street Parking.

~~Off-street p~~ Parking spaces outside the public rights-of-way and ~~any~~ private easements shall be provided, ~~according to the following schedule as follows:~~

- (1) ~~All residences shall provide o~~ Residences: One parking space for each bedroom;
- (2) Motels, inns, hotels and other buildings designed to accommodate three or more families: ~~shall provide~~ 1½ parking spaces for each lodging unit and one parking space for each bedroom within a dwelling unit. Parking spaces shall be clearly defined; when ~~the surface of a~~ parking area is gravel, ~~it parking spaces~~ may be defined by tire stops. Each parking space shall be readily accessible by motor vehicles;
- (3) ~~Restaurants: shall provide O~~ one parking space for every four seats. Parking spaces shall be clearly defined, when parking area is gravel, it may be defined by tire stops. Each parking space shall be readily accessible by motor vehicles;
- (4) All other commercial structures, home occupations, or cottage industries with up to 200 square feet of floor area: ~~shall provide t~~ Two parking spaces. One parking space shall ~~also~~ be provided for each additional 200 square feet of floor area. Each parking space shall be readily accessible by motor vehicle;
- (5) All required parking spaces ~~will~~ shall be clearly designated, marked, and usable ~~before as such on the lot prior to an certificate of occupancy permit being~~ before as such on the issued by the county inspection department;

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- (6) Loading zones. Any business establishment regularly supplied by vans or trucking exceeding 14 feet in length or any establishments ~~that includes -consisting-of~~ more than 2,000 square feet of commercial space on the same lot shall provide a clearly marked loading zone which shall be at least 12 feet by 50 feet with at least 15 feet of height clearance;
- (7) Drystack boat facilities ~~shall provide parking spaces to satisfy the formula in this section for all other commercial structures multiplied by the number of levels provided to store boats; and~~ ~~are not allowed.~~
- (8) The owner of a boat slip shall provide parking space for service and loading. For users of the boat slip, the owner shall either provide parking on-site or ~~elsewhere off-site~~, and shall ~~in any event~~ take steps to ensure that users ~~will~~ park their vehicles in permitted locations, ~~not rather than~~ in a public right-of-way or ~~and not~~ on private property without the consent of its owner.

Change suggested
3/12/15

Sec. 36-178. Fences.

Fences or shrubs may not be constructed, located, or maintained in a manner that interferes with visibility ~~of traffic at street intersections, and the operation of motor vehicles.~~

Sec. 36-179. Boat storage.

Drystack storage facilities must meet all the requirements for a building as defined within this article. No "open" stack storage (i.e., storing of more than one boat on the same "footprint") is allowed. ~~Drystack boat storage is not allowed.~~ This section does not apply to kayaks, canoes, surf boards or other light craft that are lifted by hand.

Change suggested
4/9/15

Sec. 36-180. Accessory structures.

- (a) An accessory building, structure or use is subordinate to the principal structure on the lot and shall be of a character related to the principal structure on the lot.
- (b) A detached accessory structure, except for well houses less than 25 square feet and play equipment, shall ~~be located to meet with~~ property setbacks. An accessory structure may not exceed one story ~~with a maximum of 25 feet in height of 25 feet.~~ Accessory structures shall meet Required side and rear setbacks for single-family and duplex uses, shall also apply to accessory structures. For non-single-family and duplex uses, Required side and rear setbacks for accessory buildings associated with non-single-family and duplex uses shall be a minimum of ten feet.
- (c) A travel trailer is an accessory use if it is connected to the water or septic system on a property or remains on the property for more than four weeks.

Comment [U13]: An accessory use to what?

Sec. 36-181. Reserved.

(Ord. of 12-5-2011; Amd. of 4-2-2012; Amd. of 11-3-2014(1))

Editor's note— Ord of 12-5-2011, replaced § 36-181 in its entirety. Former § 36-181 pertained to campers and travel trailers as accessory uses to provide affordable seasonal and year-round housing.

Sec. 36-182. Temporary structures.

- (a) The term "temporary structure" means a structure that is not located on a permanent foundation and does not have a permanent connection to power, ~~water-water~~, and wastewater treatment.
- (b) A building permit is required for temporary structures.
- (c) A permit is required for each location that a temporary structure may occupy.
- (d) A temporary structure may not be located in the public right-of-way or utility easements.
- (e) Uses located in temporary structures are subject to section 36-177, pertaining to parking.

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- (f) A travel trailer is allowed as a temporary structure during the rebuilding of a building destroyed or partially destroyed by fire or natural disaster.
- (g) Temporary structures needed as a result of a natural disaster or other health and safety emergencies are allowed for the duration of the emergency.
- (h) A travel trailer is allowed as a temporary structure during site and building construction.

Sec. 36-183. Home occupations.

- (a) Single-family and two-family residences may contain up to 400 square feet of floor area for business and or commercial use. This provision is intended to allow the limited production of saleable goods such as jewelry, pottery and art, sales of goods and limited professional services to the public from the main residence.
- (b) The hours of operation shall be limited to between 8:00 a.m. to 7:00 p.m. If non-family members are employed by the business, on site employee parking shall be provided.
- (c) For commercial uses serving the public, adequate parking shall be provided with a minimum of one space in addition to residential and employee parking requirements. Any catering or food service must meet health codes.
- (d) The following uses are not permitted under this section as a home occupation:
 - (1) Adult uses;
 - (2) Alcohol sales for on-site consumption;
 - (3) ~~Public~~ Indoor recreation uses; and
 - (4) Uses that produce adverse off-site impacts of noise, fumes or odors which are adverse to a neighbor's right to enjoy the normal use and living in their residence.
- (e) Change of use permit is required to verify:
 - (1) Septic capacity;
 - (2) Property setbacks;
 - (3) If the water meter capacity is adequate;
 - (4) The required parking spaces necessary under section 36-177(4); and
 - (5) That the total square footage does not exceed the limit of impervious surface area.
- (f) Any and all aspects of the commercial activity shall be contained in the 400 square feet.
- (g) Any commercial entity that claims the 400 square foot residential exemption shall be inhabited by the business owner.

Comment [LU14]: May be too vague.

Comment [LU15]: Does this mean that a development permit is required for a home occupation?

Comment [LU16]: Home occupations are not exempt. The house, not the business, must be inhabited by the business owner.

Sec. 36-184. Cottage industry.

Section skipped, sent to Variance Board

- (a) Cottage industries for the production of and or sale of plants for food up to 400 square feet on a property site are permitted only if no part of the main residence is used under section 36-180.
- (b) In addition to subsection (a) of this section, all the provisions required under section 36-183(b) through (f) shall apply.
- (c) Where there are daily deliveries needed, the requirements of section 36-177(6), loading zones, shall apply.

Sec. 36-185. Regulation of outdoor sales.

- (a) *[Purpose.]* The intent and purpose of this section is to establish minimal regulations and restrictions intended to ensure that outdoor sales; do not interfere with the orderly and safe movement of pedestrian and vehicular traffic; do not interfere with the proper maintenance of parking and yard areas; do not cause congestion in the

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streets or public rights-of-way; are conducted within structures safe for public occupancy when structures are used. At the same time, these regulations intend to recognize the tradition of outdoor sales as a part of Ocracoke's economy and also recognize and encourage the responsible development of outdoor sales establishments as an entrepreneurial incubator.

- (b) *Definitions.* For the purpose of this section the following definitions shall apply:

Kiosk. A small, free-standing non-residential structure which is primarily intended as a place for the conduct of sales, rentals, information exchange, self-service, etc. Also referred to as a booth, portico, pavilion, venting station, etc.

Outdoor sales. The display and/or sale of any merchandise, commodities or product where primary transactions are conducted a) in the open air; b) within a temporary structure, or: c) within a kiosk or similar structure.

Permanent installation. A structure attached to the ground by in-ground piers, pilings or posts, at least three and one-half inches in cross section, and set such that they are not removable without the use of digging tools or equipment.

Temporary structure. An enclosure or covering which is readily dismantled or readily moved, including, but not limited to tents, canopies, tarps, trailers, food trucks, leantos, pre-fabricated sheds, sheds and similar structures. This definition shall apply to any of these and similar structures even if, at a later date, the structure is modified, strengthened or made more permanent.

- (c) *Grandfathered uses.* Outdoor sales establishments in existence on the approval date of this amendment shall be exempt from sections of this amendment as follows:

- (1) Permanent installations in existence on the approval date of this amendment including certain signs, displays, kiosks, booths, etc. may remain in their existing locations without regard to the setback requirements in this amendment.
- (2) Outdoor sales establishments in existence on the approval date of this amendment ~~the 3rd day of June, 2013,~~ shall not be subject subsection (i).
- (3) Except as subsections (1) and (2), existing outdoor sales establishments shall be subject to the provisions of this amendment.

Change
suggested
5/14/15

Comment [LU17]: This subsection needs to be coordinated with the section that concerns nonconforming uses, buildings, and the like.

- (d) *Exceptions.* The following categories of outdoor sales are not subject to the regulations in this section: temporary yard and rummage sales and the like; the outdoor seating portion of a restaurant which is otherwise not an outdoor sales establishment; sales organized and operated by anyone under the age of 16; vending machines and self-service sales ~~taking-occupying~~ no more than none ~~nine~~ square feet; sales as a part of a short-term festival, parade, non-profit fundraising event and the like.

Change
suggested
5/14/15

All other outdoor sales shall be considered regulated outdoor sales establishments. The following regulations shall apply to regulated outdoor sales and shall be enforceable by the ODO enforcement officer.

- (e) *Permit required.* All regulated outdoor sales establishments shall be required to apply for an ODO permit by the regular ODO permit application. Approval of that application shall constitute approval to conduct an outdoor sales establishment under these regulations. Where a single owner operates more than one outdoor sales establishment, a separate permit must be acquired for each location. Where more than one point of sale may exist on a single lot, ~~a permit is required for each establishment, must acquire its own permit.~~
- (f) *Location.* Regulated outdoor sales may take place anywhere within the Village of Ocracoke as long as the owner of the outdoor sales establishment is either the owner of the land ~~it sits on~~ on which it is located, or has the expressed written permission of the owner of the land ~~it sits on on which it is located~~. At the order of ODO enforcement officer the owner of the outdoor sales establishment shall provide any documentation necessary to establish compliance with these regulations.
- (g) *Setbacks.* All structures, signage, ~~and displays, etc.~~ associated with outdoor sales shall be subject to the following minimum setback requirements: from any paved public street — ten feet from the edge of the asphalt

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pavement; from any unpaved public street — four feet from the road edge; from side and rear property lines — eight feet; from any structures, signage, displays, etc. associated with another outdoor sales establishment — eight feet.

- (h) *Safe passage.* In addition to the minimum setback requirements above, all structures, displays, merchandise, products, signage, flags, banners, ~~etc.~~ S shall be arranged such that no portion shall block or hinder established public pedestrian and bicyclist passageways or obstruct reasonable sight-lines required for safe vehicle passage at driveways and intersections. The application of this paragraph to a particular site shall be at the order of the ODO enforcement officer. On request of the affected business owner, the order of the ODO enforcement officer may be subject to additional review, in consultation with the ODO enforcement officer, the county sheriff's office and the business owner. Final determination shall be by the ODO enforcement officer. All rights and processes for appeal, as outlined in this article shall remain in effect.
- (i) *Parking.* All regulated outdoor sales establishments shall designate at least two readily accessible parking places. Both designated parking places shall be kept available for customer parking during hours of operation. Such designated parking places shall not reduce the available parking of another business or residence such that it may fall below its parking requirements as set out in this article. If the designated parking spaces are on land which does not belong to the owner of the outdoor sales establishment, a letter of agreement from the land owner shall verify the designation.
- (j) *Off-site impacts.* regulated outdoor sales establishments shall minimize off-site impacts. No lighting shall shine directly onto an adjacent residence. Trash and garbage, associated with the business, which is not contained, whether on-site or off, shall be the responsibility of the business to clean up daily. Aggressive hawking, noise, music, signage, flags, etc. shall not create a nuisance.
- (k) *Related sections.* Outdoor sales regulated under this section shall not be subject to the provisions of section 36-182 nor section 36-177.
- (l) *Other codes.* The ODO enforcement officer shall call for the enforcement of all existing building, electrical, fire, health department codes and the codes and regulations of other jurisdictions as may apply to any portion of a regulated outdoor sales establishment.

(Amd. of 6-3-2013)

Secs. 36-186—36-203. Reserved.

DIVISION 3. - BOARD OF ADJUSTMENT CREATION, POWERS AND DUTIES

Sec. 36-204. Board of adjustment.

- (a) *Board defined.* The term "board" means the board of adjustment.
- (b) *Established.* A board of adjustment is created by this article for the purposes set out in G.S. 153A-345.
- (c) *Composition.* The board shall consist of five regular members and two alternates. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.
- (d) *Terms.* Their terms of office shall be three years, except for original appointments which shall be staggered so the terms of all members do not expire at the same time.
- (e) *Voting.* An alternate member shall serve as a member of the board and vote shall vote only in the case of the absence or disqualification of a regular member. The concurring vote of four-fifths of the board shall be necessary to grant a variance. The concurring vote of a majority of the members shall be required to: ~~The concurring vote of four-fifths of the board members shall be necessary to:~~
- (1) Reverse any order, requirement, decision or determination of the development ordinance enforcement officer. or;

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~~(2)–(2) Decide in favor of the applicant any matter upon which it is required to pass under this article; or~~

~~(3)–Grant a variance from the provisions of this article;~~

~~(f) *Notice of Hearing.* Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the county may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the county shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.~~

~~(g) *Procedures.* The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances.~~

~~(h)~~

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Sec. 36-205: Appeals from development ordinance enforcement officer's decision; interpretation.

(a) Appeals.

(1) The board may hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the development ordinance enforcement officer in the enforcement of this article. The term "decision" includes any final and binding, order, requirement, or determination.

(2) Any person who has standing under G.S. 160A-393(d) or the county may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the county clerk. The notice of appeal shall state the grounds for the appeal.

(3) The development ordinance enforcement officer shall give written notice to the property that is the subject of the decision and to the party who sought the decision if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. An appeal from the decision of the development ordinance enforcement officer may be taken to the board by any person aggrieved, or by any officer, department or bureau of the county affected by such decision. The appeal must be taken within 30 days by filing with the development ordinance enforcement officer a notice of appeal specifying the grounds for it. The development ordinance enforcement officer shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The officer shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner, within ten days all papers constituting the record upon which the action appealed from was based. The board shall render a decision within 45 days after the development ordinance enforcement officer has delivered the record to the board.

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(4) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed all proceedings in furtherance of the action appealed from, unless the development ordinance enforcement officer certifies to the board, after the notice of appeal shall have been filed with him, that:

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- a. Because of the facts stated in the certificate an affidavit a stay would, in his opinion, cause imminent peril to life or property; or
- b. Because ~~the~~ violation charged is transitory in nature and a stay would seriously interfere with the enforcement of this article. In such case, enforcement proceedings shall not be stayed otherwise than except by a restraining order, which may be granted by a court, the board or by a court of record on application, on notice to the development ordinance enforcement officer from whom the appeal is taken and due cause is shown.

(5) The officer who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the county would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. In exercising the powers mentioned in subsections (1) through (3) of this section, the board may, so long as the action is in conformity with the terms of this article, reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and shall make any order, requirement, decision or determination that in its opinion ought to be made in the circumstances and to this end the board has all the powers of the officer who made the decision from whom the appeal is taken.

(b) Interpretation. The board shall pass on disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of this article.

Sec. 36-206. Variances; notice and hearings.

- (a) Authorization. The board may authorize upon appeal in specific cases a variance from the dimensional requirements of this article which will not be contrary to the public interest where, owing to special

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conditions, a literal enforcement of the provisions of this article would result in unnecessary hardship. In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with this article, provided that the conditions are reasonably related to the variance. No change in permitted uses may be authorized by variance

- (b) **Violation.** A violation of such conditions and safeguards, when part of the terms under which the variance is granted, shall be deemed a violation of this article and punishable under section 36-173.

- (c) **Variance standards.** ~~Application; contents~~ The board shall vary any of the provisions of the ordinance, other than those concerning permitted uses, upon a showing of all of the following: ~~A variance from the terms of this article shall not be granted by the board, unless and until, a written application for a variance is submitted demonstrating that:~~

- (1) Unnecessary hardships would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same neighborhood;

- (2) The hardship results from conditions that are peculiar to the property, such as the location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Literal interpretation of the provisions of this article would deprive the applicant of the rights commonly enjoyed by other property owners in the same neighborhood under the terms of this article;

- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship;

- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved;

~~(2) —~~

- ~~(3) — The special conditions and circumstances do not result from the actions of the applicant and~~

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- ~~(4) Granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other lands, structures or buildings in the same neighborhood.~~
- (d) ~~Nonconforming uses.~~ No nonconforming use of neighboring lands, structures or buildings in the same neighborhood and no permitted use of lands, structures or buildings in other areas of the district shall be considered grounds for issuance of a variance.
- (e) ~~Notice.~~ Notice shall be given at least 15 days in advance of the public hearing. The property owner for which the variance is sought or his agent and the owners of adjacent property shall be notified by mail. Notice of the hearing is sought at least 15 days prior to the public hearing.
- (e) ~~Hearing.~~ The public hearing shall be held as advertised. Any party may appear in person or be represented by an attorney or agent with written power of attorney.
- (f) ~~Findings of fact.~~ The board shall make written findings that the requirements of subsections (c) of this section have or have not been met by the applicant for a variance.
- (f) ~~Findings of fact.~~ The board shall make findings that the requirements of subsections (c) and (d) of this section have met by the applicant for a variance. The board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure. The board shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to that neighborhood or otherwise detrimental to the public welfare.
- (g) Sec. 36-207. Appeals from board of adjustment's decision: quasi-judicial decisions and judicial review.
- (a) ~~(1) Time limit.~~ Quasi-judicial decisions. The board shall determine contested facts and make the decision within 45 days after hearing the appeal. Every quasi-judicial decision shall be based on competent, material, and substantial evidence in the record. Every quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the county clerk. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made. Any appeal from a decision of the board shall be taken to the county superior court and shall be taken within 30 days after the decisions filed in the county clerk's office or after a copy of the decision is delivered to the appellant (and any aggrieved party who has filed a written request for such a copy with the secretary or chairman of the board at the time the case is heard) by registered or certified mail, whichever is later.
- (b) ~~(2) Judicial review.~~ Filings; copies. Any appeal from a decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. The development ordinance enforcement officer shall file the board's decision in the county clerk's office and shall send a copy by registered or certified mail to the appellant and other parties entitled thereto within ten working days after a decision is rendered.

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Secs. 36-208—36-226. Reserved.

DIVISION 4. - CHANGES AND AMENDMENTS

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Sec. 36-227. Procedure.

- (a) *Motion or petition.* The board of commissioners may, on its own or upon the motion or petition by any citizen or taxpayer of the county, after public notice and hearing amend, supplement, change, modify or repeal these regulations subject to the rules prescribed in this article.
- (b) *Hearing.* No change shall be made until after a public hearing is held by the board of commissioners at which parties in interest and citizens shall have an opportunity to be heard.
- (c) *Notice; publication.* A notice of hearing shall be given once a week for two successive calendar weeks in a newspaper of general circulation in the county. The notice shall be published the first time no less than ten days, nor more than 25 days prior to the date fixed for the public hearing.

Sec. 36-228. Planning board action.

- (a) The planning advisory board shall review this article as a minimum, once each five years on the same schedule as the land use plan update to retain both documents in agreement, and make a recommendation report to the board of county commissioners whether an amendment is necessary or not.
- (b) Every proposed amendment, supplement, change, modification or repeal to this article shall be referred to the planning advisory board for its recommendation report.

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- (c) The following procedure shall be followed in processing petitions for amendments submitted by citizens or taxpayers of the county:
- (1) Petitioner completes zoning amendment application form at least ten days prior to the planning advisory board meeting at which the amendment is to be considered;
 - (2) Development ordinance enforcement officer places item on planning advisory board agenda;
 - (3) Development ordinance enforcement officer evaluates request and gets comments from other departments and agencies for staff recommendation;
 - (4) Planning advisory board makes a recommendation to the county commissioners;
 - (5) The planning advisory board shall have 30 days after its first consideration of the request in which to make its recommendation;
 - (6) The county commissioners may deny the request ~~at this point~~ after 30 days has passed or after receiving the recommendation, or it may schedule a public hearing; and
 - (7) Any public hearing must be held after notice as prescribed in G.S. 153A-323 before any amendment may be ~~made~~ adopted.

Sec. 36-229. Application.

- (a) *Contents.* ~~An application~~ A petition for any change or amendment to text of this article shall contain a statement of the present and proposed regulation.
- (b) Reserved.

(Ord. of 4-6-2015(1))

~~Sec. 36-230. Fee required.~~

A nonrefundable fee, according to a regularly adopted fee schedule of the county, shall be paid to the county for each application for amendment to defray some of the advertising and other administrative expenses involved.

Secs. 36-~~230~~—36-249. Reserved.

DIVISION 5. - LEGAL STATUS PROVISIONS

Sec. 36-250. Effect upon outstanding building permits.

Nothing contained in this article shall require any change in the plans, construction, size or designated use of any building, structure or part of one for which a building permit has been granted by the building inspector prior to the time of passage of the ordinance from which this article is derived. However, where the construction has not begun under any outstanding permit within a period of 180 days subsequent to the issuance of the permit or where the construction has begun, but has been discontinued for a period of 12 months subsequent to passage of the ordinance from which this article is derived, the permit shall expire and any further construction or use shall be in conformity with the provisions of this article.

Sec. 36-251. Conflicts; most restrictive regulation governs.

It is not the intent of this article to interfere with, abrogate or annul any easements, covenants or other agreements between ~~partied parties~~. Where this article imposes a greater restriction upon the use of building or premises or upon the height of buildings or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this article shall govern. Where the provisions of any other ordinance, law or covenant require more restrictive standards, such provisions shall govern.

Change suggested
6/18/15

Comment [LU18]: "petition" rather than "application" since what is proposed is a legislative change, not an administrative permission.

Comment [LU19]:

Change suggested
6/18/15